

# Order

Entered: May 13, 2003

Michigan Supreme Court  
Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

2003-13

Proposed Amendment of  
Rule 5.408 of the  
Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering an amendment of Rule 5.408 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The schedule and agendas for public hearings are posted on the Court's website, [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The present language would be amended as indicated below.]

MCR 5.408 Review and Modification of Guardianships of Legally Incapacitated Individuals

(A) Periodic Review of Guardianship.

- (1) Periodic Review. The court shall commence a review of a guardianship of a legally incapacitated individual not later than 1 year after the appointment of the guardian and not later than every 3 years thereafter.
- (2) Investigation. Unless a court has a local review plan as provided in (A)(4), ~~the~~ the court shall appoint a person to investigate the guardianship and report to the court by a date set by the court. The person appointed must visit the legally incapacitated individual or include in the report to the court an explanation why a visit was not practical. The report shall include a recommendation on whether the guardianship should be modified.

- (3) Judicial Action. After informal review of the report, the court shall enter an order continuing the guardianship, or enter an order appointing an attorney to represent the legally incapacitated individual for the purpose of filing a petition for modification of guardianship. In either case, the court shall send a copy of the report and the order to the legally incapacitated individual and the guardian.
- (4) Local Review Plan. A court interested in establishing a program for the periodic review of guardianships of legally incapacitated individuals may submit a local review plan to the State Court Administrative Office, which may approve or disapprove the plan, or approve the plan with modifications. If a court wants to implement a plan that has been approved with modifications, it must notify the State Court Administrative Office within 28 days after receiving the approval, whereupon the plan shall be accepted. A plan approved with or without modifications shall not take effect until at least 28 days after it is accepted by the State Court Administrative Office.
- (5) Petition for Modification. If an attorney is appointed under subrule (A)(3), the attorney shall file proper pleadings with the court within 14 days of the date of appointment.

(B) [Unchanged]

Staff Comment: The proposed amendment of MCR 5.408 is based on a recommendation from the Wayne County Probate Court. The proposed amendment would allow probate courts to take local circumstances into account in designing more effective ways to protect legally incapacitated persons while lowering the costs currently charged to the estates. Under the proposal, local plans for reviewing guardianships would have to be approved by the State Court Administrative Office.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by September 1, 2003, at P.O. Box 30052, Lansing, MI 48909, or MSC\_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2003-13. Your comments and the comments of others will be posted at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 13, 2003

Corbin R. Davis

Clerk